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Collateral Consequences

Work Group Report

HB 2367-2

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*The Oregon Law Commission
is housed at the Willamette
University College of Law,
which also provides executive,
administrative and research
support for the Commission.*

I. Introduction

A. The Uniform Collateral Consequences of Conviction Act (UCCCA)

The Uniform Law Commission (ULC) recently undertook consideration of the impact of collateral consequences resulting from criminal convictions nationwide. The ULC promulgated the Uniform Collateral Consequences of Conviction Act (UCCCA) in 2009 noting:

“Concern about the impact of collateral consequences has grown in recent years as the numbers and complexity of these consequences have mushroomed and the U.S. prison population has grown. Collateral consequences are the legal disabilities that attach as an operation of law when an individual is convicted of a crime but are not part of the sentence for the crime. Examples of collateral consequences include the denial of government issued licenses or permits, ineligibility for public services and public programs, and the elimination or impairment of civil rights. There is a real concern on a societal level that collateral consequences may impose such harsh burdens on convicted persons that they will be unable to reintegrate into society.

Indeed, the judge and lawyers in the case are frequently unaware of collateral consequences that will predictably have a substantial impact upon a defendant.”

The UCCCA provides states with a model law that establishes a process whereby defendants are both notified of indirect penalties that may attach to their convictions and have an opportunity for partial relief from those penalties, when appropriate. The UCCCA, largely a procedural act, was designed to rationalize and clarify policies and provisions that already exist in many states. The UCCCA is divided into two components: notice and relief. The UCCCA includes a number of provisions related to the collection, notification, and authorization of collateral consequences. The UCCCA also provides options for relief from collateral consequences, including those associated with overturned or pardoned convictions, or those that may have been set aside in other jurisdictions. Since its approval by the ULC in 2009, the UCCCA has been enacted in Vermont and has been introduced in legislative bill form in New York.

B. Collateral Consequences in Oregon

In Oregon, a vast array of collateral consequences exists spanning statute, administrative rules, and other sources of law and policy. According to the American Bar Association’s compilation of collateral consequences in Oregon law, some 1,105 collateral consequences exist in Oregon. Collateral consequences in Oregon can have a diverse impact on many areas of an individual’s life: employment, occupation licensing, military service, possession of firearms, public housing eligibility, private housing, welfare and retirement benefits, student aid, eligibility to foster or adopt children, health care program eligibility, voting rights, rights to run for and serve in public office, tax credits, driving privileges, immigration status, and education opportunities all can be affected. There currently is no reliable compilation of the collateral consequences that exist in Oregon. And currently there are few requirements that

notice of the collateral consequences that do exist must be provided to those who will be affected by them.

II. History of the project

The Oregon Law Commission (OLC) has reviewed and recommended enactment of several legislative proposals that have been based on acts adopted by the Uniform Law Commission (ULC). Commissioner Julie McFarlane proposed consideration of adoption of the UCCCA here in Oregon to the Law Commission. The Commission's Program Committee approved the proposal and the Commission approved creation of a Work Group to address the issue. The Commission staff assembled the UCCCA work group in the summer of 2014.

The work group's mission was to evaluate the UCCCA and determine how to best integrate the Act into Oregon Law. Members of the work group included: Chairperson Julie McFarlane, Lindsay Baker, Cindy Booth, Nancy Cozine, Steve Elzinga, District Attorney Aaron Felton, Judge Courtland Geyer, Seantal Heisel, Paul Levy, District Attorney Joshua Marquis, Craig Prins, Mike Schmidt, Lynne Schroeder, Paul Smith, Bill Steele, Kristin Wings-Yanez, Madilyn Zike, Alex Bassos, Craig Bazzi, Fran Howard, Gwendolyn Griffith, Lisa Kay, Carolyn Norton, Professor Laura Appleman, Honorable Paul DeMuniz, Professor Meg Garvin, Terri Alexander, Kevin Campbell, Lindsey Dober, Joel Duran, Betsy Earls, Darrell Fuller, Susan Grabe, Megan Hassen, Sybil Hebb, Twyla Lawson, Kimberly Mansfield, Gail Meyer, Ariel Nelson, Channa Newell, Emanuel Price, Lane Shetterly, Matthew Shields, Lara Smith, Becky Straus, Jeremiah Stromberg, Superintendent Marc Thielman, Gina Williams, Representative Jennifer Williamson, Jessica Minifie, BeLisa Sydlik, Wendy Johnson, Philip Schradle, and Professor Jeffrey Dobbins.

Work Group meetings were held on September 29, 2014, November 10, 2014, January 12, 2015, and February 9, 2015. Through the course of these Work Group meetings, a Legislative Counsel Work Draft (LC 2561) was developed, discussed, and modified.

At the September 29, 2014 meeting, the work group was presented with an overview of the UCCCA. The general consensus of the Work Group was to address only the identification, collection, and notice provisions of the UCCCA at present. The Work Group chose to delay consideration and development of provisions regarding relief from collateral consequences of sanctions to a later date.

At the November 10, 2014 meeting, the Work Group discussed technical and policy adjustments they viewed as necessary to make to the identification, collection and notice provisions of the UCCCA. The Work Group also discussed ideas for individual sections of the Act regarding who should provide notice and when should notice be required. The work Group expressed interest in giving consideration to broadening the reach of the Act to

include juvenile delinquency, contempt, and guilty except for insanity cases.

At the January 12, 2015 meeting, the Work Group determined that the proposal should be broadened to include juvenile delinquency adjudications and guilty except for insanity cases and the Work Group considered changes to the draft bill to do so. Additionally, the work group determined that notice should be required at the time of accepting plea petitions in criminal cases. The Work Group further determined that contempt cases should not be included at present because they presented rather unique circumstances. The Work Group also discussed who should bear the burden of identifying, collecting, publishing, and maintaining the list of collateral consequences and determined that a new Collateral Consequences Commission should be created to perform those functions. The Work Group determined that the Collateral Consequences Commission should be composed of nine members: two members appointed by the Chief Justice of the Oregon Supreme Court; two members appointed by Legislative Counsel; two members appointed by the Attorney General; two members appointed by the Public Defense Services Commission Chair; and one person appointed by the Director of the Department of Administrative Services. The Work Group further determined that the Collateral Consequences Commission should be staffed by the Criminal Justice Commission.

At the February 9, 2015 meeting, the Work Group discussed the new Legislative Counsel Work Draft bill reflecting changes discussed at the last meeting. The Work Group walked through the bill section-by-section discussing changes in language and typographical errors that needed fixing. No substantive changes were made that materially altered the bill.

III. Statement of the problem area and objectives of the proposal

Consequences of convictions and juvenile delinquency adjudications greatly impede offenders' reintegration into society and defendants and juvenile offenders need to adequately know the potential consequences they face when entering pleas, exiting incarceration, and at various other points in criminal and juvenile delinquency proceedings. Unfortunately, the Oregon Revised Statutes do not contain a comprehensive list of collateral consequences; instead they are scattered among thousands of pages and no official state guidance is available to locate them.

By adopting modified provisions of the UCCCA related to collection and notification of collateral consequences, Oregon law could be greatly improved. Collecting and clarifying the existing collateral consequences and requiring improved notification of them will allow defendants and juvenile offenders to make more informed decisions in criminal and juvenile delinquency proceedings. Furthermore, the proposal calls upon judicial officers to confirm with adult and juvenile defendants that they have discussed the collateral consequences with counsel, both ensuring competent representation and raising awareness of collateral

consequences for all affected parties. Finally, the proposal would compile all state-sanctioned collateral consequences in a single place, reducing the ambiguity of what sanctions exist and easing the burden on all parties involved in criminal and juvenile delinquency proceedings.

IV. The proposal

Section 1. Short Title: This section formally identifies sections 1 through 8 of the bill as the Collateral Consequences of Conviction and Juvenile Adjudication Act.

Section 2. Definitions: Section 2 sets out the definitions of the important terms used throughout the bill.

“Adjudication” is defined as a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

“Admission” is defined as a formal acknowledgement of facts showing a youth offender to be within the jurisdiction of the court as provided in ORS 419C.005.

“Collateral consequence” is defined as a collateral sanction or disqualification.

“Collateral sanction” is defined as a penalty, disability or disadvantage imposed on a person as a result of the person’s conviction of an offense which applies by operation of law, whether or not the penalty, disability or disadvantage is included in the judgment of conviction or sentence.

“Decision-maker” is defined as the state, acting through a department, agency, officer or other instrumentality, including a political subdivision, board, commission or employee.

“Disposition” is defined as an order directing the disposition of a case made by a juvenile court pursuant to ORS 419C.411.

“Disqualification” is defined as a penalty, disability or disadvantage that a decision-maker is authorized, but not required, to impose on a person on grounds relating to the person’s conviction or adjudication for an offense.

“Offense” is defined as a felony, misdemeanor or violation, or an act committed by a person under 18 years of age that, if done by an adult, would constitute a violation of a law or ordinance of the United States or a state, county or city.

This section differs slightly from the language in the UCCCA in that the terminology regarding youth offenders is included and explicitly defined. The terminology contained in this section is meant to reflect the unique nature of how these terms are used in Oregon law. The work group decided that inclusion of both juvenile terminology and adult terminology more clearly and accurately reflected Oregon law.

Section 3. Establishes Collateral Consequences Commission to Identify, Collect and Make Available Compilation of Collateral Consequences: Section 3 establishes the Collateral Consequences Commission consisting of nine members: two members appointed by the Chief Justice of the Oregon Supreme Court; two members appointed by Legislative Counsel; two members appointed by the Attorney General; two members appointed by the Public Defense Services Commission Chair; and one person appointed by the Director of the Department of Administrative Services. The Collateral Consequences Commission is tasked with identifying all provisions in Oregon's Constitution, statutes, and administrative rules which impose a collateral sanction or authorize the imposition of a disqualification, as well as any provision of law that may afford relief from a collateral consequence.

This section states that the identification and collection of collateral sanctions, disqualifications, and provisions of law that may afford relief must be completed within two years of the effective date of this 2015 Act. This section also states that the Collateral Consequences Commission must update the aforementioned collection each year by February 1. This section also requires that the Oregon Criminal Justice Commission shall make this collection available to the public without charge on an Internet website no later than 30 days after it is created or updated. The collection is required to have a preface setting out disclaimers, including prominently noting that the collection does not have the force of law and that any error or omission in the collection is not a reason for invalidating a plea, juvenile admission, conviction, juvenile adjudication, finding of guilty except for insanity, juvenile disposition or sentence.

This section essentially mirrors Section 4 of the UCCCA. Section 4 of the UCCCA designates a governmental agency or official to identify and collect the aforementioned list of collateral sanctions. The work group chose to, instead of designating an already existing agency or official, create a new commission tasked with the identification and collection of collateral sanctions in Oregon law. The reasoning behind the creation of the Collateral Consequences Commission was to not only divide the labor and expenses in creating this collection with the intent of avoiding overburdening one agency or official, but also to create a wide representation of individuals in a variety of areas to ensure that a fair and accurate representation of these collateral sanctions exists. In addition, the work group determined that the Collateral Consequences Commission should consult as needed with representatives from the Department of Corrections, the Oregon Association of Community Correction Directors, the Oregon Juvenile Department Directors Association, the Oregon Youth Authority, the adult and juvenile panels of the Psychiatric Security Review Board, and the Oregon District Attorneys Association to obtain a broad perspective on collateral consequences for both adults and juveniles.

Section 4. Limitation on Scope: Section 4 provides that a failure to comply with the Act does not provide a basis for invalidating a plea, admission, conviction, adjudication, finding of guilty except for insanity, disposition or sentence. This section also provides that a failure to comply with the Act does not constitute any basis for a cause of action for money damages

and does not provide a claim for relief from application of any collateral consequence. This section explains that Sections 1 to 7 of this Act do not affect a right or remedy under a law other than sections 1 to 7 of this Act available to a person convicted or adjudicated of an offense. Section 4 further provides that the Act does not affect a lawyer's duty to provide competent representation and does not affect any victim's rights.

This section mirrors Section 3 of the UCCCA.

Section 5. Notice in Pretrial Proceedings and at Guilty Plea: Section 5 requires that when an adult defendant appears for arraignment on an accusatory instrument, the court shall cause the defendant to be notified of certain information. The information required by this section essentially warns defendants that they may suffer additional legal consequences beyond detention or incarceration, probation and fines. Section 5 warns that additional consequences may include: being unable to get or keep some licenses, permits, jobs, or volunteer positions; being unable to get or keep benefits such as public housing, public assistance, and financial assistance; having restricted access to public education and higher education; receiving a harsher sentence if you are convicted of an offense in the future; having the government take your property; and being unable to vote or possess a firearm. This section also warns that if the defendant is not a United States citizen, a conviction may result in deportation, removal or exclusion to the United States or denial of citizenship. This section further requires that before proceeding to trial or accepting a plea of guilty, the court must confirm that the defendant received and understands the notice and has had an opportunity to discuss the notice with counsel.

This section further notifies defendants that the law may provide ways to obtain some relief from these consequences, and that further information is available on the internet, and through consultation with an attorney.

This section essentially reflects Section 5 of the UCCCA, however, some changes have been made. This section only addresses adult defendants because the work group decided it more appropriate to have juvenile proceedings contained in a separate section. The language in the example form in this section more explicitly warns of the additional consequences that may apply regarding restricted access to education to address concerns raised by the work group. Additionally, the work group decided to require the warning and confirmation of notification before the court proceeds to trial in addition to before the court accepts a plea of guilty or no contest.

Section 6. Notice to Youth in Juvenile Delinquency Adjudications: Section 6 requires that when a youth is issued a summons as described in ORS 419C.303, the summons must contain certain information. The information required by this section essentially warns youth offenders that they may suffer additional legal consequences beyond detention or incarceration, probation and fines. Section 6 warns that additional consequences may

include: being unable to get or keep some licenses, permits, jobs, or volunteer positions; being unable to get or keep benefits such as public housing, public assistance, and financial assistance; having restricted access to public education and higher education; receiving a harsher sentence if you are convicted of an offense in the future; having the government take your property; and being unable to possess a firearm. This section also warns that if the youth offender is not a United States citizen, a juvenile adjudication may result in deportation, removal or exclusion to the United States or denial of citizenship. This section requires that at the youth offender's first appearance in court the court must confirm that the youth and the youth's parents or guardians have received the notice. This section further requires that before proceeding to trial or accepting an admission the court must confirm that the youth and the youth's parents or guardians have received and understand the notice and that the youth has had an opportunity to discuss the notice with counsel.

This section further notifies youth offenders that the law may provide ways to obtain some relief from these consequences, and that further information is available on the internet, and through consultation with an attorney.

This section is not contained in the UCCCA. The work group chose to include separate sections dealing with youth offenders to more accurately reflect juvenile proceedings in Oregon and ensure that youth offenders receive adequate notification of collateral consequences. The work group wanted notice to youth offenders when they are issued a summons as well as giving notice to the parents or guardians of the youth offender. The example form provided in this section mirrors the example form in Section 5 and consequently the language in the example form in this section more explicitly warns of the additional consequences that may apply regarding restricted access to education to address concerns raised by the work group. The work group decided that confirmation of notice should occur at the youth offender's first appearance in court before proceeding with trial or accepting an admission. The work group had concerns about the state of mind of youth offenders involved in formal proceedings. Consequently, the work group determined that notice should also be provided to the parents or guardians involved and that the earlier the notice and confirmation in a juvenile proceeding the better.

Section 7. Notice at Sentencing and Upon Release: Section 7 provides that an individual convicted of an offense or found guilty except for insanity shall be given notice at the time of sentencing of the collateral consequences that may apply as a result of their conviction, the internet website address of the collection of laws regarding collateral consequences and discretionary disqualifications, notice that a means to obtain relief from these collateral consequences may exist, and the contact information for any government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences. This section further provides that if a defendant is sentenced to a period of incarceration of over six months, the defendant shall be provided the same notice at least 10 days before release.

This section essentially mirrors Section 6 of the UCCCA.

Section 8. Notice at Disposition and Upon Release: Section 8 provides that a youth offender found to be within the jurisdiction of the juvenile court shall be given notice at the time of disposition of the collateral consequences that may apply as a result of the jurisdictional finding, the internet website address of the collection of laws regarding collateral consequences and discretionary disqualifications, notice that a means to obtain relief from these collateral consequences may exist, and the contact information for any government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences. This section further provides that if disposition of a youth offender's case results in commitment to a Youth Correctional Facility for more than six months, the youth offender shall be provided the same notice at least 10 days before release.

This section is not contained in the UCCCA. It is necessary to include, however, as a correlative section to Section 7 because the work group chose to include separate sections dealing with youth offenders to more accurately reflect juvenile proceedings in Oregon and ensure that youth offenders receive adequate notification of collateral consequences.

Section 9. Amends Juvenile Delinquency Adjudication Summons Provisions: Section 9 amends the juvenile delinquency adjudication provisions to provide that the summons shall contain notice of the additional legal consequences set out in Section 6(1) of the Act.

This section is not contained in the UCCCA. It is necessary, however, to address providing notice of collateral consequences to youth offenders at the time they receive a summons in a juvenile delinquency proceeding.

V. Conclusion

Currently, there is no compilation of the myriad collateral consequences that flow from criminal convictions and juvenile delinquency adjudications. Providing for collection and notification of those collateral consequences to defendants in criminal cases and youth offenders in juvenile delinquency adjudications will improve Oregon law. This proposal will foster more informed decisions by all parties involved in these cases and help ensure the fairness of these proceedings.